

**TOWN OF CUSHING**  
**PLANNING BOARD**  
**Minutes of Meeting**  
**February 1, 2006**

**Board Present:** Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Dan Remian, Mike Roberts, Town Attorney Greg Cunningham, CEO Bickford and Secretary Pro Tem Crystal Robinson

**Board Absent:** None

**Call to Order:** Chairman Roberts called the meeting to order at 7:00 pm.

**1. Minutes of 1/18/06:** Mr. Roberts corrected the second sentence of Paragraph 3 under Item #1 to say, "Mr. Tower said an unregistered land surveyor had established the lines." Also, on Page 2, near the end of Paragraph 4, the sentence should read, "Mr. Bickford said it was not Mr. Baker's job to make a specific determination." as Mr. Kiskila had not attended the meeting. Mr. Ellis, not Mr. Kiskila, seconded the motion for adjournment. Mr. Bickford suggested that members of the public announce their names before speaking, for purposes of accuracy on the tape and in the minutes.

**ACTION:** Mrs. Kalloch made a motion, seconded by Mr. Roberts, to approve the minutes as corrected.  
Carried 4-0-1 (Mrs. Kalloch abstained)

**2. Other Business:** Mr. Roberts asked about the next PB workshop and was told it would be on Wednesday, February 15, at 5:00 pm. He then asked how long the last workshop ran and was told approximately three hours, with 28 pages of minutes.

**3. Dwayne & Dale Prior:** The Priors said they wanted to review the items discussed in the last meeting for completeness before meeting with their surveyor. They provided a map to show the location of the fire pond within the common property, the previously missing road dimensions and the square footage of Lots 3, 4 and 5. Mr. Prior had calculated 61,250 Sq. Ft. of available upland on Lot 3, 53,125 Sq. Ft. on Lot 4 and 37,600 Sq. Ft. on Lot 5. Mr. Roberts said the percentage of buildable area on each lot should be noted. Mr. Prior said there had also been discussion of access to corner Lot 6. In this regard, Mr. Prior said he would like the PB to consider the following on Page 5 of Cushing's Subdivision Regulations: "Corner lots or lots on a peninsula extending into a water body require special consideration in determining frontage." At the last meeting it had been discussed that there were only 100', not the required 150', of frontage on Lot 6. Mr. Prior said he did not remember any discussion about public safety or fire equipment problems in regard to the Lot 6 driveway. He asked the PB for special consideration for the corner lot so it could remain as drawn. CEO Bickford referred the chairman to Page 13, concerning cul-de-sacs. Mr. Prior said it would be difficult to get 150' of frontage without skewing the property lines. Chairman Roberts said the Priors had a hammerhead now but replacing it with a cul-de-sac would eliminate the problem, so there was no reason for special consideration. Mr. Prior said putting in a cul-de-sac would swing it into the wetland and the future lot owner might want to move the driveway, which would further impact the wetland. Mr. Ellis asked how putting in a cul-de-sac would affect the driveway and Mr. Prior replied that it would require a radius turn that would cut into the wetland. Mr. Remian asked if the property line between Lots 5 and 6 could be adjusted. Mr. Prior said he was close to 40,000 square feet and the only way he could extend the frontage was to make a jagged lot line. Mr. Roberts asked the diameter of the circle and Mr. Remian said it was 100'. Mr. Ellis asked Mr. Cunningham for his interpretation of the corner lot frontage definition. Mr. Cunningham said the first sentence explained how to measure frontage, while the second said it could be measured differently if it were not a straight-line configuration; he felt it did not necessarily give permission for the PB to allow less. The waiver provisions might allow that, he said, if the PB felt the applicants met the provision for a waiver.

Mr. Prior said again that the lot was accessible for emergency and vehicles he didn't want to change the lines. Mr. Roberts stated that almost anyone with a corner lot could claim the same thing, which meant everyone could ask for an exception; nevertheless, the frontage did not meet the requirements. Mr. Prior asked the chairman to take it to a vote. Mr. Cunningham reminded all present that he had said, at the last meeting, that the Priors should provide a letter from their surveyor stating that a hammerhead was the best option if they wanted a waiver. Mr. Roberts asked the Priors to present such a letter at the next meeting, adding that the letter should include the reasons why

a cul-de-sac was not appropriate. Mr. Prior asked the Board to take a vote now as to whether they would act favorably if they received such a letter. Mr. Ellis ascertained that the wetland disturbance was 2,684 Sq. Ft. on the current plan. Mr. Roberts asked the members how they felt. Mr. Kiskila felt the hammerhead would work for the Fire Dept. and referenced Woody Lane, which had a hammerhead at the end of a longer road. Mrs. Kalloch and Mr. Remian said they would be in favor of a waiver after receiving the surveyor's letter. Mr. Ellis asked what point there was in getting such a letter since Mr. Prior's surveyor would do as he asked. Mr. Roberts replied that the Priors had to return anyway and having the letter as part of the record would support the Board's decision.

**4. Last Resort Holdings, portion of Map 5 & 6, Meduncook Plantation Subdivision:** Mr. Tower provided his usual introduction and requested that approval of his application be tabled. He said he did not have DEP approval in hand. He said he had submitted a new packet, as the Board requested, and asked if there were any questions regarding it. One of the PB members said it did not contain an abutter's list and Mrs. Kalloch said the application had not been signed.

Mr. Tower said he had forgotten to bring the letter from a registered surveyor, which stated he had made sufficient field measurements to confirm the ledge profile depicted on the drawing; he would submit it within two days. Mr. Tower then referred the Board to Note #10 on the drawing, asking if it included the information they had requested. Mr. Roberts felt it was correct and Mr. Remian asked if the surveyor would demonstrate how he had arrived at the conclusion noted. Mr. Tower said he did not think a drawing would be submitted, but the surveyor's letter would say that he had made sufficient field measurements to confirm that the topographical data on the road profile drawing was accurate. Mr. Remian said that would not prove that the slopes were not under Resource Protection [RP]. Mr. Tower said it was ultimately the Board's decision whether the note was sufficient proof for a positive finding of fact. Mrs. Kalloch asked if the 183' from the shoreline to the road (Lot 10) was in RP, saying there was no documentation on record. Mr. Tower recalled that the Board, at the last meeting, had made no decision where RP was going to be. He had presented a drawing, then, that depicted flat areas that rendered the steep slopes noncontiguous. He said he had labeled parts of the common area as RP, as the Board requested.

Mr. Roberts asked Mr. Remian if he was unhappy with the wording. Mr. Remian replied that it would depend on the wording of the surveyor's letter, since he himself had looked at the site and it exceeded 20% slope. He would like to have an engineer determine that there was less than a 20% slope from the road to the water. Mr. Tower said that was not what he was saying. He made a diagram showing the slope and the shelf (less than 20% slope). He said there was an area below the road, possibly more than two acres, that had a slope greater than 20% and he agreed this was RP. Above this, he said, there were areas of 20% slope but none was greater than 2 acres. Thus, the road and the area above it were not RP. Mr. Remian said the road profile contour lines did not show the shelf. Mr. Tower agreed, saying the 5'-interval contours had been developed from aerial photography and could not be relied upon for specific landforms. For this reason, Mr. Tower said, he had profiled the ledge, showing that the road followed a 10% grade, which was less than 20% slope.

Audience member Kim Young said his attorney had faxed information, stating that some lines were in question, to Town Attorney Cunningham. Mr. Young felt a surveyor could not make an accurate representation until those lines had been agreed upon. Mr. Ellis stated that the property lines of the subdivision did not abut Mr. Young's property; he said that Mr. Young was not an abutter to the subdivision because Mr. Dugan's property was between them. Mr. Roberts told Mr. Young he was beyond West Knoll, but Mr. Young said the lines were tied in to a single monument and he was contesting the application because all of the lines were in question. Mr. Roberts said the issue would need to be cleared up by attorneys. Bob Garcia said the West Knoll line was determined by Mr. Young's line and the PB could not vote on the application until the matter was resolved. Mr. Cunningham advised Mr. Roberts that the PB's role was limited to the ordinances; title and value dispute issues were not within its responsibility or jurisdiction. The application contained a deed as evidence that Mr. Tower owned the property and anyone disputing that had the burden of making the issue crystal clear to the PB. Otherwise, Mr. Cunningham said, he would recommend that the PB had sufficient information to proceed with the application. He suggested the parties settle the issue and return next month. Mr. Tower said he was asking that his application be tabled and stated that Mr. Young was not an abutter.

CEO Bickford asked if the application were approved and it subsequently became apparent that the lines were wrong, if the application would have to be amended. Mr. Cunningham replied that it was in Mr. Tower's interest to be absolutely certain his lines were correct. Mr. Tower said a registered land surveyor had researched the lines and he was confident his conclusions would withstand any scrutiny. Mr. Tower said Mr. Young's statements tonight were the first indication that any professional had another opinion. He assured the Board that he would work with Mr. Young on resolving the issue. Mrs. Kalloch asked if Mr. Tower had surveyed Mr. Robbins' property to see if it agreed with the deed he provided. Mr. Tower replied that he had surveyed the property and had provided a deed

research report to Mr. Young. The discussion continued, with both Mr. Tower and Mr. Young trying to explain his position to the PB, but the issue was not resolved.

Mr. Remian noted that the covenants had not been updated for Lot #26; Mr. Tower said he would address that. Mr. Cunningham said that a member of the PB and the DEP felt the road was in RP while the applicant did not. He suggested an independent third party opinion be obtained because the DEP might take action against the town if there were an inappropriate approval regarding RP. CEO Bickford said he had received a communication from the DEP's Rich Baker, saying he identified the road area as being in RP. Mr. Bickford agreed that an independent authority should make the final determination. Mr. Tower said it was inappropriate to have asked any state official to look at the issue because it was the PB's responsibility to enforce its Shoreland Zone ordinance. Mr. Tower said his surveyor had used more sophisticated equipment than Mr. Baker and provided drawings to demonstrate that Mr. Baker's opinion was wrong. Mr. Tower pronounced it offensive that the state would tell the town how to enforce its ordinance. Mr. Ellis asked the CEO how specific Mr. Baker's report had been. The CEO said it had been rather general but had also suggested that Lots 9 & 10 might be in RP.

Mr. Roberts read aloud from Mr. Baker's letter and concluded that Mr. Baker had not specifically said the road was in RP but, rather, had suggested that the PB look closely at its location. Mr. Cunningham disagreed and Mr. Roberts said he thought the letter was too vague and, thus, open to differing interpretation. The members discussed having an independent party review the issue. Mr. Cunningham said that Shoreland Zoning was a state-imposed program and the state retained enforcement rights.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, to hire outside services to determine this.  
No vote taken.

Mr. Kiskila said he thought the cost should be born by the applicant. Mr. Cunningham advised on the wording of the motion. There was further discussion as the members tried to find ordinance reference to the applicant's paying. Mr. Ellis found the reference in the Shoreland Zone ordinance on Page 3 in Section 10. Mr. Cunningham advised the Board to get a written commitment to pay the costs from the applicant before hiring someone. When asked for a suggestion on whom to hire, Mr. Bickford suggested Gartley & Dorsky or Landmark. Mr. Cunningham thought the third party's job would be to simply confirm whether Mr. Tower's depiction was correct. Mr. Bickford suggested that Lots 9 & 10 also be considered in the survey. Mr. Tower suggested his surveyor meet with the Board at the site to demonstrate his calculations. Mr. Bickford suggested Mr. Baker also attend but Mr. Roberts and Mr. Ellis did not agree. Mr. Roberts said the PB should follow its attorney's advice to hire a third party, though Mr. Tower might want his surveyor present. It was agreed that Mr. Bickford would contact Gartley & Dorsky and get a quote, which he would then give to Mr. Tower.

Mr. Cunningham said that Note #10 on the plan looked okay, but the plan needed a date and the word "in" in the next to last line should be changed to "is". Mr. Tower asked Mr. Kiskila if Note #9 was satisfactory. Mr. Kiskila said it was and he would propose sprinkler systems for all lots at the February 15 workshop.

**ACTION:** Mr. Roberts made a motion, seconded by Mrs. Kalloch, to confirm that the hiring of an independent surveyor would be paid for by the applicant and the CEO would find said consultant and provide a quote to Mr. Tower.  
Carried 5-0-0

**5. Sherrill Arey, Map 7, Lot 64, to expand a present pier:** Mr. Arey said he wanted to extend his pier by 8' on the south and by 10' on the north. He stated the extensions would not cause the pier to protrude further into the cove. Mr. Arey said he had a DEP permit and had discussed his plans with Mr. Staples, the harbormaster; Mr. Bickford confirmed he had a copy of the DEP permit. Mr. Remian confirmed with Harbormaster Dan Staples that the paperwork from the Army Corps of Engineers was forthcoming.

Kim Young said there was a case in Superior Court that disputed whether Mr. Arey's pier was built from his property and he asked if the Board had the authority to rule on a property that was in dispute. Mr. Arey stated that it was on his property according to old survey maps, but said Mr. Young had brought up the issue of riparian rights. Mr. Ellis said he thought the Board did not have jurisdiction on anything beyond the high water mark. CEO Bickford said the Shoreland Zone ordinance referred to jurisdiction "from the high water mark inland." He said he had discussed this with MMA, which had said it could be contested; Mr. Bickford thought the Board should address this section of the ordinance and clear it up. Mr. Staples said he felt the Board did not have jurisdiction because it would cause a redundancy since five state agencies had jurisdiction over various aspects of the shoreland. Mr. Roberts said new wharves did come under the PB's jurisdiction while Mr. Remian noted Mr. Arey's wharf already existed.

Mr. Staples quoted Rich Baker as having said regulations of these structures by municipalities was not required. Mr. Staples contended that Cushing had chosen to regulate only those structures that touched the Shoreland Zone; he said the ordinance was contradictory and needed to be revamped. Bob Garcia said he thought the issue was whether the applicant had clear title to the land connected to his pier; he repeated that this was an active case in Superior Court. Mr. Roberts replied that the Board did not have to act on the application because it was not within its jurisdiction.

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Remian, to remove the issue from consideration because it was not within the Board's jurisdiction.  
Carried 5-0-0

**6. Donald Young, application to build a garage on Map 5, Lot 17B:** CEO Bickford said he had met with Mr. Young and, though his property was in RP, the area where the garage would be built was flat, was beyond 75' and was a permitted use as a commercial fishery. He suggested the Board go through the criteria for RP. Mr. Young disputed that he was in RP because his dock, along with approximately 15 other commercial docks in town, had been overlooked when the ordinance was adopted in 1991; his dock was built in 1983. Mr. Roberts said he had told the Selectmen this was a problem that needed to be addressed.

Mr. Staples agreed that there were at least 15 other commercial areas that had been erroneously included in RP. Mr. Roberts said that Mid-Coast Regional Planning was willing to draw up a revised map. Mr. Remian said the mapping was in process but the town did not want to pay for it; therefore, a digitized G.I.S. map set had been ordered from the state. Mr. Staples said it would be a problem if the state declared RP areas before the town determined its commercial fisheries areas. Mr. Ellis said the ordinance was fuzzy as to permitted uses and needed to be rewritten. Mr. Bickford added that the ordinance committee needed to make it site (lot) specific. Mr. Staples noted that it should cover current conditions in order to protect the working waterfront. Mr. Young said his deed stated he was commercial but the town had listed his property as residential.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, to approve the building permit.  
Carried 5-0-0

**7. Old Business:** None

**8. New Business:** None

**9. Adjournment:** Mr. Roberts made a motion, seconded by Mr. Remian, to adjourn at 8:50 pm.  
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey  
(Transcribed from the notes of Crystal Robinson and the audio recording)